



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1994

Mr. James Showen
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

Dear Mr. Showen:

This is in response to your request that this office reconsider its conclusion in Open Records Letter No. 94-284 (1994) that portions of a statement provided by a rape victim's father is subject to required public disclosure. Your most recent letter to this office concerning this matter has been assigned ID# 27995.

In Open Records Letter No. 94-284, this office held that the City of Tyler must withhold pursuant to common-law privacy only that information that reveals or tends to reveal the rape victim's identity and physical and emotional state, and we marked the requested statement for redaction pursuant to this holding.¹ You disagreed with these markings and have asked us to reconsider whether common-law privacy would require the governmental body to withhold the entire statement of the victim's father, given the nature of the criminal offense involved.

Because of the importance of this issue, we have agreed to reconsider our ruling in Open Records Letter No. 94-284. We are therefore withdrawing Open Records Letter No. 94-284 and re-opening the file for further review and analysis. Please provide us within 10 days of the date of this letter any additional briefing you wish to submit on the matter.

Yours very truly,

A handwritten signature in dark ink, appearing to read "S. J. Shirley", is written over a horizontal line.

S. J. Shirley
Chair
Opinion Committee

SJS/RLP/rho

¹ In reaching this conclusion, this office assumed that none of the information held to be protected appears in public court records. To the extent that any of this information is contained in court records, it is not protected by common-law privacy and therefore must be released to the public. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992).



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1994

Mr. James Showen
Senior Assistant City Attorney
City of Tyler
Legal Department
P.O. Box 2039
Tyler, Texas 75710

OR94-284

Dear Mr. Showen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a) (the "act").¹ Your request was assigned ID# 24065.

The City of Tyler Police Department (the "department") has received a request for information regarding a particular criminal rape case. The department has or will release all of the requested statements with the exception of a statement made by the victim's father. The department claims that this statement is excepted from required public disclosure under section 552.101 of the act in conjunction with common-law privacy.

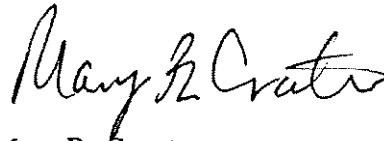
In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court concluded that section 552.101 of the act protects from required public disclosure information the release of which would constitute the common-law tort of invasion of privacy. In order to be excepted from required public disclosure under the doctrine of common-law privacy, information must contain highly intimate or embarrassing information about a person's private affairs and be of no legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 685. This office has concluded that names and other information which would

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

tend to identify victims of serious sexual offenses are protected from required public disclosure under the doctrine of common-law privacy, as is a detailed description of the offense. *See Open Records Decision No. 339 (1982)*. Therefore, we conclude that the department must not release information which would tend to identify the victim or her father. Furthermore, we believe that information in the statement that reveals the victim's physical and emotional state following the rape is similarly protected. *See id.* We have marked the information which is confidential. The remainder of the information must be released.

Because case law and prior published open records decisions resolve your request, we address it with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 24065

Enclosures: Marked documents

cc: Mr. A. B. Butler, Jr.
P.O. Box 4500
Tennessee Colony, Texas 75886
(w/o enclosures)